INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	4
Summary of Argument	11
Argument	14
I. Petitioner's religious scruples do not exempt him from the naturalization qualifications prescribed by Congress	15
II. The naturalization statutes preclude an award of citizenship to an alien conscientious objector who refuses to pledge participation in the defense of the United States during time of war or emergency	26
A. The provisions of the naturalization laws	27
B. The administrative and judicial construction	34
C. The administrative and judicial construction of the naturalization laws was confirmed and reenacted by Congress	47
III. Petitioner has not satisfied the requirements of the naturalization laws. Therefore he is unqualified for naturalization	58
A. The claim to special naturalization status as a consequence of generous treatment of conscientious objectors in selective service legislation	60
B. The claim to full equality with native born American citizens	64
C. The claim that the oath of allegiance taken outside the naturalization process never has been regarded as entailing a promise of military service	66
D. The claim that the requirements of the statute are satisfied since petitioner describes himself as attached to the United States and asserts that he is willing to take an unqualified oath of allegiance	68
Conclusion	70

CITATIONS

Cases:

	Page
Allan v. *United States*, 115 F. 2d 804	31
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	55
Atlantic Cleaners & Dyers v. *United States*, 286 U. S. 427	66
Baumgartner v. *United States*, 322 U. S. 665	21, 31
Beale v. *United States*, 71 F. 2d 737	49, 52
Bevelacqua, In re, 295 Fed. 862	30
Billings v. *Truesdell*, 321 U. S. 542	17, 46
Board of Education v. *Barnette*, 319 U. S. 624	17, 24
Bonham v. *Chi Yan Cham Louie*, 166 F. 2d 15	10
Bridges v. *Wixon*, 326 U. S. 135	49
Clarke's Case, 301 Pa. 321	49
Cleveland v. *United States*, 329 U. S. 14	16, 17
Cox v. *United States*, 332 U. S. 442	19
Davis v. *Beason*, 133 U. S. 333	16
Eagles v. *Samuels*, 329 U. S. 304	19
Estep v. *United States*, 327 U. S. 114	19
Falbo v. *United States*, 320 U. S. 549	18
Fong Yue Ting v. *United States*, 149 U. S. 698	20
Gibson v. *United States*, 329 U. S. 338	19
Girouard v. *United States*, 328, U. S. 61,	10, 12, 13, 14, 15, 38-40, 42, 43, 47, 59, 68
Hamilton v. *Regents*, 293 U. S. 245	23, 32, 38, 61, 67
Helvering v. *Hallock*, 309 U. S. 106	55
Helvering v. *Stockholms &c. Bank*, 293 U. S. 84	66
Helvering v. *Winmill*, 305 U. S. 79	55
Hines v. *Davidowitz*, 312 U. S. 52	20
Hirabayashi v. *United States*, 320 U. S. 81	17, 19
Jacobson v. *Massachusetts*, 197 U. S. 11	16, 17
Kessler v. *Strecker*, 307 U. S. 22	49
Kinloch, In re, 53 F. Supp. 521	43
Klapprott v. *United States*, 335 U. S. 601	21
Knauer v. *United States*, 328 U. S. 654	21, 31
Knauff, United States ex rel. v. *Shaughnessy*, No. 54, this Term, decided January 16, 1950	20
Luria v. *United States*, 231 U. S. 9	20, 29
Maney v. *United States*, 278 U. S. 17	21
Missouri v. *Ross*, 299 U. S. 72	55
Murdock v. *Pennsylvania*, 319 U. S. 105	17
Nielsen, In re, 60 F. Supp. 240	43
Oceanic Steam Navigation Co. v. *Stranahan*, 214 U. S. 320	20
Ozawa v. *United States*, 260 U. S. 178	65
Prince v. *Massachusetts*, 321 U. S. 158	17
Rase v. *United States*, 129 F. 2d 204	18, 19
Reynolds v. *United States*, 98 U. S. 145	16

POOR COPY

BLEED THROUGH

Cases—Continued

	Page
Roodenko v. *United States*, 147 F. 2d 752, certiorari denied, 324 U. S. 860	19
Samras v. *United States*, 125 F. 2d 879, certiorari denied, 317 U. S. 634	20
Saralieff, In re, 59 F. 2d 436	30
Sawyer, In re, 59 F. Supp. 428	43
Schneiderman v. *United States*, 320 U. S. 118	21, 22, 30
Selective Draft Law Cases, 245 U. S. 366	17, 33
Shanin, In re, 278 Fed. 739	30
Shelley v. *United States*, 120 F. 2d 734	49
Siem, In re, 284 Fed. 868	33
Summers, In re, 325 U. S. 561	24, 25, 38, 48, 67
Swaczyk v. *United States*, 156 F. 2d 17, certiorari denied, 329 U. S. 726	19
Toyota v. *United States*, 268 U. S. 402	65
Tutun v. *United States*, 270 U. S. 568	21, 22
United States v. *Bland*, 283 U. S. 636	12, 14, 35-36, 37, 48
United States v. *Elgin J. & E. Ry.*, 298 U. S. 492	55
United States v. *Ginsberg*, 243 U. S. 472	20
United States v. *Macintosh*, 283 U. S. 605,	12, 14, 22, 23, 35, 36, 37, 48
United States v. *Manzi*, 276 U. S. 463	22
United States v. *Ness*, 245 U. S. 319	21
United States v. *Ryan*, 284 U. S. 167	55
United States v. *Schwimmer*, 279 U. S. 644,	12, 14, 22, 23, 34, 35, 48
United States v. *Thind*, 261 U. S. 204	65
United States v. *Wong Kim Ark*, 169 U. S. 649	65
Warentkin, In re, 93 F. 2d 42, certiorari denied, 304 U. S. 563	49

Constitution:

Article I, Section 8	20
Article VI, clause 3	67
First Amendment	15

Statutes:

Act of March 26, 1790, 1 Stat. 103	28
Act of January 29, 1795, 1 Stat. 414	28
Act of March 3, 1863, 12 Stat. 731	18, 61
Act of February 24, 1864, 13 Stat. 6	18, 61
Act of January 21, 1903, 32 Stat. 775	61
Act of June 29, 1906, Sec. 4(3), 34 Stat. 596	28
Act of June 3, 1916, 39 Stat. 166	61
Act of May 18, 1917, 40 Stat. 76	18, 61
Act of May 9, 1918, 40 Stat. 542	45
Act of July 19, 1919, 41 Stat. 222	45
Act of May 26, 1926, 44 Stat. 654	45

Statutes—Continued

	Page
Act of March 4, 1929, 45 Stat. 1545	45
Act of May 25, 1932, 47 Stat. 165	45
Act of June 24, 1935, 49 Stat. 395	45
Act of August 23, 1937, 50 Stat. 743	45
Act of June 21, 1939, 53 Stat. 851	45
Act of June 28, 1940, 54 Stat. 670	48
Act of September 16, 1940, as amended (Selective Training and Service Act of 1940) 54 Stat. 885, 55 Stat. 844, 56 Stat. 1010	4, 18, 61
Act of March 27, 1942 (Second War Powers Act), 56 Stat. 176, 182	42
Act of December 7, 1942, 56 Stat. 1041	42
Act of June 1, 1948, 62 Stat. 281	42
Act of June 24, 1948 (Selective Service Act of 1948) c, 62 Stat. 609, 50 U.S.C. App., Supp. II, 456	61-62
United States Code:	
Title 5:	
Section 16	66
Title 38:	
Section 693 g	46
Section 447	46
Nationality Act of 1940, 54 Stat. 1137:	
Section 301(d)	21
Section 303	65
Section 304	31
Section 307(a)	2, 27, 53
Section 311	5
Section 324A	43
Section 327	34
Section 332	31
Section 334(d)	10
Section 335	3, 27, 54
Revised statutes, Section 1757	28
Miscellaneous:	
American Bar Association Journal, Vol. 33, pages 95, 323, 540, 663, (1947)	62
Code of Federal Regulations:	
Title 32:	
Section 622.5	5
Section 623.21(b)	5
Section 622.12	5
Codification of the Nationality Laws of the United States, House Committee Print, 76th Cong. 1st Sess.	53

POOR COPY

BLEED THROUGH

Miscellaneous—Continued

	Page
Director of Selective Service, 4th report (1948) pp. 175-186	62
Elliff, *Prosecution of Conscientious Objectors under the Selective Service Act,* (1944) 6 Fed. Bar Journ. 41	19, 62
Immigration and Nationality Laws and Regulations (1944) pp. 541-567	49
McCown, *Conscience* v. *the State,* (1944) 32 Cal. L. R. 1	17
Naturalization Regulation of July 1, 1929, Rule 8(c)	28
War Department, *Statement Concerning the Treatment of Conscientious Objectors in the Army,* 1919	46, 63
Wigmore, *United States* v. *Macintosh Symposium* (1931) 26 Ill. L. R. 375	62

Congressional Material:

67 Cong. Rec. 7957	45
71 Cong. Rec. 2184	50
72 Cong. Rec. 6966-6967	52
75 Cong. Rec. 15354-15357	52
88 Cong. Rec. 1589	45
88 Cong. Rec. 1790-1791	45
88 Cong. Rec. 1794	45
94 Cong. Rec. 1947-1948	45
Hearings on H.R. 10271, 68th Cong., 2d Sess.	46
Hearings on H.R. 3547, 71st Cong., 1st Sess.	51
Hearings on H.R. 297, 72d Cong., 1st Sess.	51
Hearings on H.R. 6127, superseded by H.R. 9980, 76th Cong., 3d Sess.	53
Hearings on S. 315, 78th Cong., 1st Sess.	64
H. Doc. 46, 59th Cong., 1st Sess.	28
H. Rep. 1789, 59th Cong., 1st Sess.	28
H. Rep. 5075, 59th Cong., 1st Sess.	28
H. Rep. 763, 68th Cong., 1st Sess.	46
H. Rep. 382, 69th Cong., 1st Sess.	45
H. Rep. 994, 76th Cong., 1st Sess.	49
H. Rep. 2683, 76th Cong., 3d Sess.	49
H. Rep. 2396, 76th Cong., 3d Sess.	53
H. Rep. 1765, 77th Cong. 2d Sess.	45
H. Rep. 1896, 77th Cong., 2d Sess.	45
H. Rep. 1408, 80th Cong., 2d Sess.	45
H. Rep. 1575, 80th Cong., 2d Sess.	56
H. Rep. 1881, 80th Cong., 2d Sess.	62
H. Conf. Rep. 2438, 80th Cong.	62
H. R. 3547, 71st Cong., 1st Sess.	50, 51
H. R. 297, 72d Cong., 1st Sess.	50, 51
H. R. 298, 72d Cong., 1st Sess.	50, 51
H. R. 1528, 73d Cong., 1st Sess.	50, 51
H. R. 5170, 74th Cong., 1st Sess.	50, 51
H. R. 8259, 75th Cong., 1st Sess.	50, 51

Congressional Material—Continued

	Page
H. R. 6147, 79th Cong., 2d Sess.	56
H. R. 6531, 79th Cong., 2d Sess.	56
H. R. 1118, 80th Cong., 1st Sess.	56
H. R. 1191, 80th Cong., 1st Sess.	56
H. R. 2286, 80th Cong., 1st Sess.	56
H. R. 2444, 80th Cong., 1st Sess.	56
S. Rep. 4373, 59th Cong., 1st Sess.	28
S. Rep. 566, 69th Cong., 1st Sess.	45
S. Rep. 1721, 76th Cong., 3rd Sess.	49
S. Rep. 2150, 76th Cong., 3rd Sess.	53
S. Rep. 989, 77th Cong., 2d Sess.	45
S. Rep. 1664, 77th Cong., 2d Sess.	45
S. Rep. 503, 80th Cong., 1st Sess.	57
S. Rep. 1207, 80th Cong., 2d Sess.	45
S. Rep. 1268, 80th Cong.	62
S. Rep. 1390, 80th Cong., 2d Sess.	57
S. Rep. 65, 81st Cong., 1st Sess.	57
S. Doc. 3, 81st Cong., 1st Sess.	57
S. 3275, 72d Cong., 1st Sess.	50, 51
S. 165, 75th Cong., 1st Sess.	50, 51
S. 315, 78th Cong., 1st Sess.	64

POOR COPY

BLEED THROUGH

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 373

MARTIN LUDWIG COHNSTAEDT, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Kansas Supreme Court (R. 28-32) is reported at 167 Kan. 451.

JURISDICTION

The judgment of the Supreme Court of the State of Kansas was entered June 11, 1949 (R. 28-32), and a motion for rehearing filed July 1, 1949 (R. 32-36), was denied July 8, 1949 (R. 36). The petition for a writ of certiorari was filed October 6,

1949, and was granted December 5, 1949 (R. 37). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3). See also 28 U. S. C. 2101(c).

QUESTION PRESENTED

Whether an alien who, because of religious scruples, states that he would not, if required in time of war or national emergency, serve in the armed forces of the United States in any capacity, combatant or non-combatant, and that he would make no direct contribution to the war effort, by work in war industry or otherwise, meets the standards which Congress has prescribed for naturalization.

STATUTE INVOLVED

Section 307(a) of the Nationality Act of 1940, 8 U. S. C. 707(a) stipulates that:

> No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

POOR COPY

BLEED THROUGH

Section 335 of the Nationality Act of 1940, 8 U. S. C. 735, provides:

> (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same, * * *.
>
> (b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:
>
> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature.

STATEMENT

Petitioner was born in Germany in 1917, entered the United States in 1937, and has since resided in the United States (R. 4-5, 9-11). He is presently employed as a teacher at Sterling College, Sterling, Kansas (R. 11-12). He married an American citizen in 1943, and at the time of the hearing in November, 1947 (R. 6) they had two children (R. 11, 12, 17).

Petitioner is a member of the Society of Friends and is opposed to any participation in armed conflict. In registering for the draft during World War II, he described himself as a conscientious objector and claimed exemption from both combatant and noncombatant service in the armed forces of the United States (R. 17). In his Selective Service questionnaire, petitioner agreed to perform work of national importance under civilian direction, as authorized by the Selective Training and Service Act of 1940,[1] but limited his commitment to such work "only as will conform with the dictates of my conscience."[2] Thereafter petitioner was classified IV-E, for limited civilian serv-

---

[1] Sec. 5(g) Selective Training and Service Act of 1940, 50 U.S.C. App. 305(g).

[2] The record is not entirely clear concerning the petitioner's Selective Service status during World War II. In order to develop a fuller picture of the facts for the benefit of this Court, additional information has been obtained from the Director of Selective Service. Any statements relating to petitioner's Selective Service status which are not fully reflected in the record are based upon information supplied by the Director of Selective Service.

POOR COPY

BLEED THROUGH

ice as a conscientious objector (R. 17).[3] His assignment to that category did not remain constant and from time to time his classification was subsequently revised to II-C (deferment as agricultural worker), II-A (occupational deferment other than for agricultural workers), IV-A (deferment because of age), and finally to III-A (deferment for dependents). He did not remain in class IV-E long enough at any time for his name to be reached in its regular order for assignment to a civilian camp for conscientious objectors. Consequently, he never was assigned to such a camp or ordered to do any work of national importance as a conscientious objector. His occupational deferments were based upon his duties as a teacher in various schools alleged to be teaching agriculture, and on employment in agricultural work (R. 10-11, 25).[4]

On May 13, 1947, petitioner filed a petition for naturalization in the District Court of Barton County, Kansas (R. 4-5), whereby he sought naturalization under Section 311 of the Nationality Act of 1940, 8 U. S. C. 711, on the basis of his relationship to a citizen of the United States. While his naturalization application was under consideration, petitioner was examined by a United States

---

[3] See 32 C.F.R. 622.5, 623.21(b). A conscientious objector who agreed to perform noncombatant military service was classified 1-A-0, 32 C.F.R. 622.12, 623.21(b).

[4] See note 2, supra.

naturalization examiner and gave the following sworn testimony (R. 23-25; See also R. 13-17):

Q. On April 9, 1947, at Hutchinson, Kansas, you testified before me and you stated that you believed the existence of Armed Service is not necessary in a Christian nation. Is that correct?

A. Yes.

Q. Are you willing to have repealed all laws of the United States which provide for raising and maintaining the Armed Services of this Country?

A. Yes.

Q. Are you an ordained minister?

A. No. I am a member of the Society of Friends which has no ordained ministers.

Q. When you were questioned by Examiner McCaul on April 9, 1947, at Hutchinson, Kansas, as to what service you were willing to render in time of war you answered: "Any relief of suffering or any effort of a constructive nature which did not require entering the Armed Forces." Will you explain in more detail what you mean by that answer?

A. I am willing to perform any duty the Government requires of me in time of emergency which does not conflict with my Christian beliefs.

Q. Is it your position that you cannot contribute in any way to armed forces for the purpose of rendering this country victorious in armed conflict for any cause whatever?

A. That is correct to this extent. I do not believe in this country engaging in armed

POOR COPY

BLEED THROUGH

conflict for any reason and I cannot contribute anything to be used solely and directly in furtherance of armed conflict.

Q. In time of war would you be willing to render any and all services for which you may be physically able to render in furtherance of the war effort of the United States which would not necessitate the wearing of the uniform of one of the armed forces and which would not necessitate the bearing of arms?

A. Only as qualified in my answer to the question next above.

Q. Did it meet with your approval for the United States to send arms and ammunitions to Russia and England to be used in their efforts to destroy the German Army in the recent war?

A. It did not. I was opposed to that.

Q. Are you glad Germany was defeated in the recent war?

A. I was opposed to Nazism in Germany from its inception and I would be pleased if Germany were freed from it but I do not believe it has been nor has it been benefited directly in any way by the war. I also believe the United States has lowered its resistance to Nazi influence because of having expended its energies in an attempt to resist Nazism by armed force.

Q. Are you willing to work in a munitions factory in time of war, and assist in the manufacture of munitions which are for the purpose of destroying the enemy forces whose aim is to destroy the armed forces of the United States?

A. No.

Q. What, if anything, did you do or try to do in furthering the war effort of the United States during the recent war?

A. Whatever I did would be beneficial in time of peace as well as in time of war and if my work furthered the war effort it was purely incidental and not because I intended to further the war effort. My work was teaching agriculture, testing butter fat and working in UNRRA which work was at all times of national importance and acceptable to my draft board.

Q. In the event it should be permissible in time of war for civilians to remove the wounded from the battlefield would you be willing to render service of this kind?

A. Yes.

Q. In the event it should be permissible in time of war for civilians to deliver ammunition to men at the front who were engaged in combat duty would you be willing to assist in delivering such ammunition to our fighting men?

A. No.

Q. Would you be willing to assist in the manufacture of atomic bombs for use in destroying an enemy of the United States?

A. No.

Q. Since you are willing to remove wounded from the battlefield as a civilian why do you object to doing the same work in uniform of the armed forces?

A. I have to draw the line some place and I think I should refuse to wear the uniform for

POOR COPY

BLEED THROUGH

the reason that it is the symbol of secular authority over the authority of Jesus Christ. However, I would not object to wearing a uniform so long as I would not be required to be a member of the armed forces.

Q. If you were a minister could you wear the uniform as a chaplain?

A. No. Because chaplains are members of the armed services.

On the basis of these statements, the examiner found that petitioner had "failed to establish attachment to the principles of the Constitution and favorable disposition toward the good order and happiness of the United States during the period required by law" (R. 5). On petitioner's demand, a hearing was held before the court on November 18, 1947 (R. 6), at which petitioner and his witnesses testified (R. 9-25), the examiner filed his recommendation that the petition be denied (R. 6), and petitioner's statement quoted above was acknowledged by him and introduced in evidence (R. 23-25). At the hearing petitioner asserted also that he subscribed to the principles enunciated in the Constitution of the United States of America and that he was willing to take an oath of allegiance to the United States without any mental reservation (R. 12). However, further inquiry elicited his reservations against any participation in or support of armed conflict in which the United States might become involved (R. 13-18, 23-25).

On February 28, 1948, the court entered a decision finding "that under the authority of *Girouard v. United States,* 328 U. S. 61, * * * said Petitioner should be admitted to citizenship of the United States * * *" (R. 6). Later, on June 23, 1948, after petitioner had filed a motion for judgment in accordance with the court's findings and conclusions, the court entered another order denying the petition for naturalization (R. 7). A motion for a new trial was argued and denied on August 18, 1948 (R. 7). From the order denying his petition for naturalization, Cohnstaedt appealed to the Supreme Court of Kansas, contending that the decision of the United States Supreme Court in the *Girouard* case required his admission to citizenship. However, on June 11, 1949, the Supreme Court of Kansas affirmed the judgment denying his petition for naturalization and concluded that the doctrine of the *Girouard* case related only to the grant of naturalization to one who was willing to serve in the armed forces as a noncombatant (R. 28-32). Petitioner's application for review by this court followed.[5]

---

[5] Cohnstaedt has prosecuted his appeals against the United States Immigration and Naturalization Service. Under the naturalization laws the United States is granted status as a possible adverse party in every naturalization proceeding. Sec. 334 (d), Nationality Act of 1940, 8 U.S.C. 734 (d). The United States is the proper party in an appeal from an order granting or denying citizenship. *Bonham* v. *Chi Yan Cham Louie,* 166 F. 2d 15 (C.A. 9). Consequently petitioner appears to have misnamed the adverse party to this proceeding. However, no objection to this apparent irregularity was made at any previous stage in the proceeding, and peti-

POOR COPY

BLEED THROUGH

SUMMARY OF ARGUMENT

I

The assertion of religious principles does not relieve even a citizen from legislative measures adopted in furtherance of public safety, morals, and health. Certainly it does not excuse him from the obligation to perform military service in defense of the nation. Any exemptions from such service on the basis of conscientious scruples are a matter of grace rather than right.

Since religious objections cannot preclude the exercise of governmental authority in matters touching the public welfare, they cannot excuse an alien seeking citizenship from observing all requirements of the naturalization laws. Naturalization is a privilege to be granted or withheld in the discretion of Congress. An alien who seeks the award of that privilege has the burden of demonstrating that he has complied fully with the conditions established by Congress. If he cannot meet those conditions, because of conscientious opposition or for any other reason, he cannot be naturalized.

Thus there is no question of legislative power in this case. The only issue presented here is whether Congress actually has required that an applicant for naturalization must at least be willing to par-

---

tioner's appeals have been regarded as prosecuted against the United States. The Government did not urge this irregularity in opposing the grant of certiorari and does not challenge it now.

ticipate in some capacity in the war effort of the United States.

II

The naturalization laws require that an applicant must be "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States" and that he take an oath of allegiance agreeing "to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic" and "to bear true faith and allegiance to the same." These requirements demand an affirmative expression of loyalty, a pledge of fidelity and support. They contemplate an inquiry into applicant's attitude towards United States citizenship. An alien cannot win the extraordinary privileges of American citizenship without accepting at the same time the responsibilities inherent in that status. No duty of citizenship is more vital to the nation than the citizen's obligation to aid in the national defense.

For many years the administrators of the statute have read it as requiring an undertaking to bear arms or otherwise contribute to the defense of the nation during time of war or emergency. That reading was supported by the Supreme Court in three decisions. *United States* v. *Schwimmer*, 279 U. S. 644; *United States* v. *Macintosh*, 283 U. S. 605; *United States* v. *Bland*, 283 U. S. 636. The most recent pronouncement of this Court, *Girouard*

POOR COPY

BLEED THROUGH

v. *United States,* 328 U. S. 61, while it re-examined and modified the doctrine upon which the prior decisions had been based, held no more than that a person who agreed to perform military service in a noncombatant capacity, at a time when Congress had declared such service acceptable as a basis for naturalization, could be granted citizenship. The court did not hold in the *Girouard* case that an alien who would not undertake to make any contribution to the defense of the nation nevertheless could demand the privilege of American citizenship.

Through the years following the *Schwimmer* and *Macintosh* decisions Congress confirmed and adopted the interpretations of the naturalization laws announced in those cases. It accomplished this by failing to amend those statutes to change the rule enunciated by the Supreme Court, although it was making numerous other revisions, by refusing to enact proposed legislation seeking to overcome those decisions, and by failing to make any alteration in the pertinent qualifications—on the contrary, they were clarified and emphasized—when enacting a comprehensive codification of the naturalization laws in 1940, following a seven year study. The *Girouard* decision determined merely that this positive indication of Congressional approval had yielded in a limited area to a later Congressional expression favoring the naturalization of noncombatant members of the armed forces.

There is no comparable expression in the instant case.

III

Cohnstaedt refused to pledge any service or support for the nation during a time of peril. He reserved a right of private judgment superior to the authority and the security of the state. The courts below found that he had not sustained the burden of establishing compliance with the requirements of the naturalization laws. That finding is abundantly supported by the evidence and by the previous rulings of this court, including the *Girouard* case. Therefore petitioner was properly denied citizenship.

ARGUMENT

The issues presented in this case transcend the status of Cohnstaedt or the rights of the group he represents. They involve a consideration of the privileges and responsibilities of American citizenship. They concern the attempt of an individual to assert his own will in opposing urgent public measures adopted by Congress. They deal with the power of our Government to exert its authority in the domain of national self preservation.

That these are warmly disputed issues is underlined by the close divisions in this Court on the four previous occasions when analogous questions were under consideration. *United States* v. *Schwimmer*, 279 U. S. 644; *United States* v. *Macintosh*, 283 U. S. 605; *United States* v. *Bland*, 283 U. S. 636; *Girou-*

POOR COPY

BLEED THROUGH

ard v. *United States,* 328 U. S. 61. We cannot agree with the petitioner, however, that the latest of these pronouncements—the *Girouard* case—was intended to foreclose further examination of this problem. That decision, as we read it, found that the naturalization statutes permitted the award of citizenship to one who was willing to make important contributions to the national defense, including noncombatant service in the armed forces, during a time of crisis. But the *Girouard* decision did not, we believe, contemplate that the boon of American citizenship would be granted to one who refused to pledge that he would in any way aid in the defense of the nation during its hour of emergency.

In our view, consequently, the decision below did not in any way conflict with the *Girouard* holding. Moreover, we believe that the denial of Cohnstaedt's petition for naturalization was commanded by the requirements of the naturalization laws.

I

Petitioner's Religious Scruples Do Not Exempt Him From the Naturalization Qualifications Prescribed by Congress

Petitioner's contention that Congress, when it enacted the naturalization laws, intended to confer a special status upon conscientious objectors like himself, relies upon the traditional policy expressed by the First Amendment to the United States Constitution, which forbids any law "respecting an

establishment of religion, or prohibiting the free exercise thereof." Freedom of religion is a cornerstone of our society, but the Constitutional postulate assuring each American the "free exercise" of his religion is subject to many obvious limitations even where citizens are concerned. The authority of the State would soon become a mockery if each individual were permitted to consult his own conscience before deciding whether he should obey a law of general application. As this Court pointed out in *Jacobson* v. *Massachusetts,* 197 U. S. 11, 26:

> There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. [6]

Through the years this court has vindicated the paramount authority of the state to compel obedience, even on the part of those professing religious scruples, in areas of public safety, morals and health. That these are matters of paramount national concern is universally agreed. Thus, the plea of religious compulsion has been unavailing as against laws proscribing polygamy (*Reynolds* v. *United States,* 98 U. S. 145), bigamy (*Davis* v. *Beason,* 133 U. S. 333), and interstate transporta-

[6] For similar expressions see *Reynolds* v. *United States,* 98 U.S. 145, 166; *Davis* v. *Beason,* 133 U.S. 333, 342-3; *Cleveland* v. *United States,* 329 U.S. 14, 20.

POOR COPY

BLEED THROUGH

tion of women for immoral purposes (*Cleveland* v. *United States*, 329 U. S. 14). That plea also has been unsuccessful in attempts to resist health measures such as those requiring compulsory vaccination (*Jacobson* v. *Massachusetts*, 197 U. S. 11) and safeguarding children on the public streets (*Prince v. Massachusetts*, 321 U. S. 158).[7] Even the cases which have struck down direct encroachments upon individual liberty of speech or religion have conceded the supreme authority of the state in matters of major public concern.[8]

It is also indisputable, we believe, that the farthest expanse of governmental authority is attained during time of war or emergency. Extreme expedients, justifiable only during those critical seasons, are invoked to insure self preservation. See *Hirabayashi* v. *United States*, 320 U. S. 81. A potent weapon in this arsenal of extraordinary authority is the power to demand from each individual military service in defense of the nation. *Selective Draft Law Cases*, 245 U. S. 366. Personal preferences and scruples must yield to the overriding national need. See *Billings* v. *Truesdell*, 321 U. S. 542, 556. As this Court described that concept in *Jacobson* v. *Massachusetts*, 197 U. S. 11, 29,

---

[7] Other illustrations are cited in *Board of Education* v. *Barnette*, 319 U.S. 624, 655, and McCown, *Conscience* v. *The State*, (1944) 32 Cal. L.R. 1.

[8] See *Board of Education* v. *Barnette*, *supra*; *Murdock* v. *Pennsylvania*, 319 U.S. 105, 109.

the liberties safeguarded in the United States Constitution do not deny that each of us

> may be compelled, by force, if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot in its defense.

It is true that Congress at various times has granted special dispensations to conscientious objectors. But those relaxations have by no means been uniform, and indeed until 1940 the religious dissenter was required to perform at least noncombatant military duty.[9] Since Congress has "complete discretion" to fix exemptions from military service, its treatment of conscientious objectors is a matter of grace rather than right. *Falbo* v. *United States,* 320 U. S. 549, 553. Persons professing religious scruples have no absolute or constitutional right to avoid military service. *Rase* v. *United States,* 129 F. 2d 204, 210 (C.A. 6); *Swaczyk*

---

[9] The first federal Draft Act of March 3, 1863, 12 Stat. 731, contained no provision for exempting conscientious objectors. It was amended February 24, 1864, 13 Stat. 6, to authorize the assignment of conscientious objectors to noncombatant military duty or to procure release from military duty upon payment of a bounty of $300. Sec. 4 of the Selective Draft Act of May 18, 1917, 40 Stat. 76, permitted the assignment of conscientious objectors to noncombatant military duty. The Selective Training and Service Act of 1940, 54 Stat. 885, authorized for the first time, in Sec. 5(g), an exemption from military duty upon assignment to work of national importance under civilian direction. See also Point IIIA, infra.

POOR COPY

BLEED THROUGH

v. *United States*, 156 F. 2d 17 (C.A. 1), certiorari denied, 329 U. S. 726; *Roodenko* v. *United States*, 147 F. 2d 752 (C.A. 10), certiorari denied, 324 U. S. 860. They must accept the classifications established by Congress or suffer the consequences.[10] As the court pointed out in the *Rase* case, *supra:*

> The Constitution grants no immunity from military service because of religious convictions or activities. Immunity arises solely through Congressional grace in pursuance of a traditional American policy of deference to conscientious objection and Holy calling. * * *
>
> No question of religious liberty, in any true sense, is here involved, and the zealous and ill-advised pursuit of a martyr role is not, by the sanction of the Constitution, permitted to imperil national safety without the preservation of which, liberty of conscience and religion will everywhere disappear.

Consequently it seems indisputable that religious objections cannot defeat the exercise of governmental authority in the domain of public welfare. And it is patent also that in the control of aliens, including authority to prescribe the conditions of entry and to establish grounds for deportation, the

[10] See Elliff, *Prosecution of Conscientious Objectors under the Selective Service Act*, (1944) 6 Fed. Bar Journ. 41. The classification could be judicially questioned only after exhausting all administrative remedies, usually after induction, and upon a showing that the classification had no basis in fact or law. *Estep* v. *United States*, 327 U.S. 114; *Gibson* v. *United States*, 329 U.S. 338; *Eagles* v. *Samuels*, 329 U.S. 304; *Cox* v. *United States*, 332 U.S. 442. See also *Hirabayashi* v. *United States*, 320 U.S. 81, 108.

power of Congress is absolute.[11] A comparable sweep of authority may be observed with regard to the fixing of the qualifications for naturalization. The United States Constitution empowers Congress "to establish an uniform Rule of Naturalization". Article I, Section 8. It follows, therefore, that the conditions under which an alien may be awarded United States citizenship are defined exclusively by Congress, and are subject to no limitation except that the standards must be uniform throughout the United States.[12] Consequently no alien can claim an absolute right to be naturalized as a citizen of the United States. *Luria* v. *United States,* 231 U. S. 9, 23. Since it has plenary authority in this area of legislative responsibility Congress may grant or withhold the privilege of naturalization under any uniform conditions that are satisfactory to it. *United States* v. *Ginsberg,* 243 U. S. 472.

Naturalization is thus a privilege rather than a right. An alien who seeks this privilege must conform strictly with the requirements established by

---

[11] *Oceanic Steam Navigation Co.* v. *Stranahan,* 214 U.S. 320; *Fong Yue Ting* v. *United States,* 149 U.S. 698. The supremacy of federal authority in this realm excludes any intervention by the states. *Hines* v. *Davidowitz,* 312 U.S. 52. In the *Stranahan* case, *supra,* at p. 339, this Court declared, in discussing the authority to regulate the admission of aliens, that "over no conceivable subject is the legislative power of Congress more complete * * *". See also *United States ex rel. Knauff* v. *Shaughnessy,* No. 54, this Term, decided Jan. 16, 1950.

[12] The Constitutional mandate for a uniform naturalization rule contemplates only geographical uniformity and does not require full equality of treatment for each class of naturalization applicants. *Samras* v. *United States,* 125 F. 2d 879 (C.A. 9), certiorari denied, 317 U.S. 634.

POOR COPY

BLEED THROUGH

statute. *United States v. Ness*, 245 U. S. 319. If he cannot demonstrate such compliance his petition must fail. *Maney v. United States*, 278 U. S. 17. Congress has emphasized this precept by declaring that a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed by statute, and not otherwise. Sec. 301(d), Nationality Act of 1940, 8 U. S. C. 701(d). Only after he has complied fully with the established requirements can an applicant claim a right to be naturalized. *Tutun v. United States*, 270 U. S. 568.

In recent years this Court has underscored the inestimable value of American citizenship, and has insisted that the status of a naturalized citizen may be extinguished only upon the strongest showing of impropriety. *Schneiderman v. United States*, 320 U. S. 118; *Baumgartner v. United States*, 322 U. S. 665; *Knauer v. United States*, 328 U. S. 654; *Klapprott v. United States*, 335 U. S. 601. But at the same time this Court has observed, *Baumgartner v. United States, supra*, at p. 676:

> We are fully mindful that due observance of the law governing the grant of citizenship to aliens touches the very well-being of the Nation. Nothing that we are now deciding is intended to weaken in the slightest the alertness with which admission to American citizenship should be safeguarded.

Because the citizenship status, once granted, is so difficult to take away, it is essential that the

keenest vigilance be exercised to prevent the naturalization of unworthy applicants. Moreover, the petitioner for naturalization, in common with all litigants who seek to win benefits allowed by law, must shoulder the burden of proving that he possesses the specified qualifications.[13] *Tutun v. United States, supra.* If there are any doubts whether citizenship should be awarded they generally must be resolved in favor of the United States and against the petitioner. *United States v. Manzi,* 276 U. S. 463.

These general principles have never been seriously contested. Indeed, they have been iterated or assumed in every previous decision by this Court dealing with cognate problems under the naturalization laws. Prevailing and dissenting opinions alike[14] started from the premise that Congress, acting within its orbit of plenary authority and defining privileges not available without its sanction, could deny naturalization to aliens unwilling to share in the defense of the nation. There has been division of opinion only as to whether Con-

---

[13] The burden of proof is thus quite different from that in proceedings to revoke naturalization, in which the Government must establish fraud or illegality by "clear, unequivocal, and convincing" evidence. *Schneiderman* v. *United States, supra.*

[14] The only possible exception is the dissenting opinion of Justice Holmes in the *Schwimmer* case, in which the exact basis for the dissent apparently is not indicated. In all likelihood, however, the basis for that dissent was intended to be identical with the fuller dissenting opinion of Chief Justice Hughes, two years later, in the *Macintosh* case, which conceded the power of Congress to bar the naturalization of conscientious objectors if it desired to do so.

POOR COPY

BLEED THROUGH

gress actually has established such a requirement in the naturalization laws.

This point of agreement is clarified and accentuated by two decisions of this Court, neither of which ever has been questioned or overruled. *Hamilton v. Regents,* 293 U. S. 245, arose as the result of a California statute which required students at the State university to take a course of study in military science and tactics. A number of students refused to take this course, asserting that it collided with their religious and conscientious scruples. They were suspended from the university and brought suit challenging the validity of the state law. In a unanimous decision [15] the Supreme Court rejected their challenge. The concurring opinion of Justice Cardozo, joined by Justices Brandeis and Stone,[16] made the following observations, 293 U. S. at 265-266, 268:

> The petitioners * * * have not even been required in any absolute or peremptory way to join in courses of instruction that will fit them to bear arms. If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its

---

[15] This unanimity is particularly significant in the light of the divisions in the *Schwimmer* and *Macintosh* cases, decided respectively 5 years and 3 years earlier.

[16] Justice Brandeis had dissented from the *Schwimmer* and *Macintosh* decisions. Justice Stone had voted with the majority in *Schwimmer,* but had dissented in *Macintosh.*

welfare.[17] This may be condemned by some as unwise or illiberal or unfair when there is violence to conscientious scruples, either religious or merely ethical. More must be shown to set the ordinance at naught. In controversies of this order courts do not concern themselves with matters of legislative policy, unrelated to privileges or liberties secured by the organic law. * * *

* * * * *

Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.

In re Summers, 325 U. S. 561, was decided by this Court less than a year prior to its decision in the *Girouard* case. There a native born citizen was excluded from admission to the bar of Illinois because he was a believer in passive resistance, was

[17] In *Board of Education* v. *Barnette,* supra, the *Hamilton* case was distinguished on the ground that it involved school attendance which was optional, rather than compulsory.

POOR COPY

BLEED THROUGH

opposed to violence, and would not undertake to perform military service. The Illinois courts found that the prerequisite oath of allegiance, similar to that exacted in naturalization cases, encompassed an undertaking to perform military service. The prevailing opinion of this Court, written by Justice Reed, repulsed a claim that this requirement impaired the Constitutional liberty of religion, and stated, 325 U. S. at 570-571, 572-573:

> The responsibility for choice as to the freedom of its bar rests with Illinois. * * * Of course, under our Constitutional system, men would not be excluded from the practice of law, or indeed from following any calling, simply because they belong to any of our religious groups, whether Protestant, Catholic, Quaker or Jewish, assuming it conceivable that any state of the Union would draw such a religious line. We cannot say that any such purpose to discriminate motivated the action of the Illinois Supreme Court.
>
> * * * * *
>
> The United States does not admit to citizenship the alien who refuses to pledge military service. * * * Even the powerful dissents which emphasized the deep cleavage in this Court on the issue of admission to citizenship did not challenge the right of Congress to require military service from every able-bodied man. * * * It is impossible for us to conclude that the insistence of Illinois that an officer who is charged with the administration of justice must take an oath to support the Constitution

> of Illinois and Illinois' interpretation of that oath to require a willingness to perform military service violates the principles of religious freedom which the Fourteenth Amendment secures against state action, when a like interpretation of a similar oath as to the Federal Constitution bars an alien from national citizenship.

We believe these decisions, read with the authorities previously discussed, establish decisively the principle that one who wishes to seek a limited privilege must meet the conditions that are prescribed, regardless of his conscientious objections. And it follows irresistibly, in our opinion, that an applicant for naturalization may not obtain citizenship in defiance of a contrary Congressional directive, merely because conscientious scruples prevent him from satisfying the generally applicable qualifications. He must comply fully with the conditions fixed by Congress, or forego the privilege of naturalization. Thus the only crucial question in this case is whether Congress has required that an applicant for naturalization must promise full support to the Nation during time of war or emergency.

II

The Naturalization Statutes Preclude an Award of Citizenship to an Alien Conscientious Objector Who Refuses to Pledge Participation in the Defense of the United States During Time of War or Emergency

In opposing Cohnstaedt's naturalization the Government has not questioned the sincerity of his con-

POOR COPY

BLEED THROUGH

victions, nor has it impeached his character. The petition is resisted solely on the basis of the reservations announced by the petitioner himself in defining his attitude toward American citizenship. His refusal to promise to support and defend the nation if called upon during any emergency, present or future, disqualifies him, in our opinion, from the benefits of American citizenship. We base this view upon a reading of the naturalization statutes, upon the legislative attitude and the administrative interpretation, and upon the previous decisions of this court.

A. The Provisions of the Naturalization Laws

Two separate requirements of the naturalization laws govern the disposition of this case. Because they manifestly are interrelated, we consider them together. First, there is the injunction in Sec. 307(a) of the Nationality Act of 1940 against the naturalization of any person unless he "is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States." Secondly, there is the command, in Sec. 335 of the Nationality Act, that a naturalization petitioner before his admission to citizenship must take an oath of renunciation and allegiance which shall include undertakings "to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic"

and "to bear true faith and allegiance to the same." [18] The form of the oath to be taken by each candidate for citizenship has been embodied in the statute itself since 1940.[19] It is evident that these directives are of the highest significance. In some measure they have been included in the design of the naturalization statutes almost since the beginnings of our national existence.[20] They have the

---

[18] Earlier in the same section the applicant is required to pledge that he will "support the Constitution of the United States." The repetition of language makes it clear that the later directives of that section, quoted above, deal with a pledge to contribute to the national defense. This also is clear from the promise to defend against all enemies "foreign and domestic".

[19] Before then the statute merely recited the substance of the oath, and the precise form of the oath was prescribed only by administrative regulation in Rule 8(c) of the Naturalization Regulations of July 1, 1929.

[20] The first naturalization statute of March 26, 1790, 1 Stat. 103, merely directed that the applicant for naturalization take an oath "to support the constitution of the United States." The revision of January 29, 1795, 1 Stat. 414, added the requirement that the applicant must establish to the satisfaction of the court that he is "attached to the constitution of the United States, and well disposed to the good order and happiness of the same." No important changes were made in succeeding naturalization laws. The Naturalization Act of June 29, 1906, in Sec. 4, Third, 34 Stat. 596, amplified the prescribed form of the oath of allegiance and provided for the first time that the applicant's oath must include commitments that "he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." The contemporaneous materials do not offer any explanation for this amplification. See H. Doc. 46, 59th Cong., 1st Sess.; H. Reps. 1789 and 5075, S. Rep. 4373, 59th Cong., 1st Sess. It is possible, however, that the provisions regarding the oath of allegiance were revised so that they would conform substantially with comparable provisions regarding oaths of allegiance prescribed in other connections. See R. S. 1757, 5 U.S.C. 16.

POOR COPY
BLEED THROUGH

most vital bearing on the applicant's fitness for American citizenship.

In discharging its Constitutional mandate Congress quite properly has regarded the naturalization process as a matter of the gravest moment. Our traditions of freedom and the needs of a growing nation have been crystallized in a generous national policy favoring the naturalization of deserving aliens. But Congress never has fully opened the gates for all aliens who might desire the blessings of American citizenship. Standards of residence, character, and loyalty have been prescribed, and provision has been made for searching inquiry by administrative officers and by the naturalization courts. The procedures have been designed to evaluate the applicant in the light of his performance and promise, to probe his understanding and appreciation of the responsibilities of American citizenship, and to determine whether the interests of the nation would be served by admitting him to full and equal status as an American citizen. As this Court has stated, in *Luria* v. *United States*, 231 U. S. 9, 23:

> These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the Government and himself, the proof in respect

> of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than what they told of the past.

The statutory command that an applicant for naturalization must be attached to the principles of the Constitution and well disposed to the good order and happiness of the United States is couched in the most general terms. This generality of language largely defeats any attempts at precise definition. See *Schneiderman* v. *United States*, 320 U. S. 118, 139. But at the same time it is clear that Congress demanded from each naturalization applicant an undivided loyalty and a pledge of firm support for the nation he wished to join.

> Attachment to the principles of the Constitution * * * implies, I think, a depth of conviction which would lead to active support of the principles in question, to doing one's share to maintain them. It is to persons holding such views, and to them only, that citizenship in this country is open.

In re Shanin, 278 Fed. 739 (D. Mass). See also *In re Saralieff*, 59 F. 2d 436 (E.D.Mo.); *In re Bevelacqua*, 295 Fed. 862 (D. Mass.).

Manifestly, the ascertainment of whether a person is attached and favorably disposed to the United States entails an exploration of his mental processes guided principally by his own testimony and

POOR COPY

BLEED THROUGH

his previous behavior. An apt description of this process may be found in *Allan* v. *United States,* 115 F. 2d 804 (C.A. 9):

> The burden of proof on appellant is to show a mental condition, i.e., his *attachment* to the principles of the Constitution and possession of a certain *disposition* towards the good order and happiness of the United States. Obviously, the petitioner's testimony concerning his mental attitude is of primary importance in establishing his burden of proof. [Emphasis original.]

Another decisive element in divining the applicant's attitude toward the United States is the oath of allegiance he must take as an integral part of his naturalization proceeding. That oath "relates to a state of mind and is a promise of future conduct. It is the final act by which the alien acquires the status of citizen." *Knauer* v. *United States,* 328 U. S. 654, 671. Under the very terms and nature of the oath itself, and by explicit statutory direction, that oath must be taken without any reservations. Id. *Baumgartner* v. *United States,* 322 U. S. 665.

In assessing the worth of a naturalization applicant no account is taken of his position, his wealth, or even his education.[21] Under our scheme of government those factors are not relevant in the pro-

[21] The only educational qualifications are that the applicant for naturalization, if physically capable, must be able to speak the English language and must sign the petition for naturalization in his own handwriting. Secs. 304 and 332, Nationality Act of 1940, 8 U.S.C. 704 and 732.

nouncement of judgment. However humble his station, an alien resident may aspire to become an equal member in the select fellowship of American citizenship. In return for this incalculable privilege he is asked to pledge an undivided fidelity and an affirmative support for the nation. American citizenship brings many benefits, but it demands in return the assumption of duties that must be performed if the social order, which gives to American citizenship its high value, is to survive. Citizenship in the United States would indeed be cheaply won if an alien could claim it without promising to assume the obligations inherent in that status or if he were permitted to announce which of those obligations he would choose to honor.

Little purpose would be served by attempting to enumerate all the duties which an American citizen owes his country. But in a survey of their relative importance it is likely that most Americans would rate the citizen's contribution to the national defense in time of crisis as most vital. Like many other responsibilities of citizenship, this duty frequently entails inconvenience, hardship, and even personal risk. However, each good citizen willingly makes the sacrifices that are required of him as his contribution to the common welfare. That is a privilege and a responsibility of good citizenship. As this Court pointed out in *Hamilton* v. *Regents*, 293 U. S. 245, 262:

> Government, federal and state, each in its own sphere owes a duty to the people within its

POOR COPY

> jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies.

See also *Selective Draft Law Cases*, 245 U. S. 366; *In re Siem*, 284 Fed. 868 (D. Mont.).

In our view the Congress of the United States and the great body of American citizens expect that an alien who wishes to join our ranks will agree to assume his share of the burdens of American citizenship, including the obligation to aid in the nation's defense when called upon to do so. We believe that his willingness to make that pledge is a true measure of attachment to our institutions. An alien who declines to promise any such support to the nation or who reserves the right to determine for himself whether he will obey the nation's call cannot, in our opinion, establish that he is attached and well disposed to the United States and cannot unreservedly take an oath that he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that he will bear true faith and allegiance to the same. Consequently, he has failed to satisfy the conditions prescribed by Congress and does not merit the bestowal of American citizenship.

B. The Administrative and Judicial Construction

At least since 1923[22] the Immigration and Naturalization Service, which is charged with administrative supervision over the naturalization process,[23] consistently has taken the position that every applicant for naturalization must promise to support and defend the United States during time of war or emergency, if called upon to do so. While that administrative view is not necessarily controlling, it should be given weight in construing the statute. Moreover that reading of the statute has been approved by this Court.

The first such case to reach the United States Supreme Court, in 1929, was *United States* v. *Schwimmer,* 279 U. S. 644. Mrs. Schwimmer described herself as an uncompromising pacifist "with no sense of nationalism, but only a cosmic consciousness of belonging to the human family." 279 U. S. at 648. She was willing to take the oath of allegiance but would not agree to bear arms if her services were required. Her petition for naturalization was rejected by a divided Court, three judges dissenting. The Court concluded that petitioner was disqualified from naturalization on two

---

[22] Since 1923, the preliminary application form that must be filed by each person who seeks naturalization, has required each naturalization applicant to answer substantially the following question: "If necessary, are you willing to take up arms in defense of the United States?" This now appears as question 21 on the final application form N-400.

[23] Sec. 327, Nationality Act of 1940, 8 U.S.C. 727.

POOR COPY
BLEED THROUGH

grounds: (1) she could not establish that she was attached to the Constitution and well disposed to the good order and happiness of the United States; (2) she could not take an unqualified oath of allegiance. The majority opinion stated (279 U. S. at 650-651):

> That it is the duty of citizens by force of arms to defend our government whenever necessity arises is a fundamental principle of our Constitution.
>
> * * * * *
>
> Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. And their opinions and beliefs as well as their behavior indicating a disposition to hinder in the performance of that duty are subjects of inquiry under the statutory provisions governing naturalization.

In his dissenting opinion Justice Holmes declared, 279 U. S. at 654:

> Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country.

Two years later the Supreme Court again was confronted with similar issues in *United States v. Macintosh,* 283 U. S. 605, and *United States v. Bland,* 283 U. S. 636. Macintosh was an ordained minister and a professor of theology at Yale University, who had served as a Chaplain in the Canadian Army during World War I. In applying for naturalization he insisted that he was willing to take the oath of allegiance. He stated, however, that while he was not necessarily opposed to all wars he would agree to support a military undertaking engaged in by the United States only if he believed the war was morally justified. 283 U. S. at 617-619. He thus reserved a right to pass private judgment in determining whether he would support and defend the United States. The Supreme Court again found itself divided, this time 5 to 4. The prevailing opinion rejected the petition for naturalization and declared, 283 U. S. at 626:

> It is not within the province of the courts to make bargains with those who seek naturalization. They must accept the grant and take the oath in accordance with the terms fixed by the law, or forego the privilege of citizenship. There is no middle choice. If one qualification of the oath be allowed, the door is opened for others, with utter confusion as the probable final result.

Chief Justice Hughes, in his dissenting opinion, conceded that Congress could require that an applicant for naturalization must promise to bear arms

POOR COPY

BLEED THROUGH

in defense of the United States, but denied that there was any such requirement in the naturalization laws. He argued that the oath of public officers, similar to that exacted of naturalization applicants, never had been understood to include an agreement to perform military service, that Congress always had been generous in granting exemption from compulsory military service to conscientious objectors, and made the following additional comments, 283 U. S. at 630-631, 635:

> It goes without saying that it was not the intention of the Congress in framing the oath to impose a religious test * * * I think that the requirement of the oath * * * should be read in the light of our regard from the beginning for freedom of conscience. * * *
>
> * * * * *
>
> * * * the requirement of "attachment to the principles of the Constitution" * * * again, is a general phrase which should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience.

The applicant for naturalization in the *Bland* case, decided the same day as *Macintosh* and on the same grounds, was a nurse who had spent nine months in the United States Army in France during World War I, and who insisted on qualifying her pledge to support and defend the United States by adding in writing the statement "as far as my conscience as a Christian will allow." The major-

ity of the court ruled that "the words of the statute do not admit of the qualification upon which the applicant insists." 283 U. S. at 636, 637.

The next direct holding by the Supreme Court on a related issue was *Girouard v. United States*, 328 U. S. 61, which arose during World War II. However, it is important to observe that in two intervening decisions in somewhat analogous situations the Supreme Court recognized and confirmed the doctrines it previously had enunciated in the *Schwimmer, Macintosh* and *Bland* decisions. See *Hamilton v. Regents* and *In re Summers*, discussed under point Point I, *supra*.

Girouard, like his predecessors, asserted that he believed in the form of government in the United States and was willing to take the oath of allegiance. However, he indicated that he was a member of the Seventh Day Adventist sect and therefore had religious scruples against combatant military duty, although willing to serve the United States in any other capacity that would not require him to bear arms, including noncombatant service in the armed forces. In resolving this issue the Supreme Court again was divided—this time the vote was 5 to 3. The majority expressed disagreement with the *Schwimmer, Macintosh* and *Bland* decisions, to the extent that they barred an alien from naturalization because of his refusal to bear arms. 328 U. S. at 63, 69. The nub of its holding is found, we believe, in the following excerpt from the prevailing opinion, 328 U. S. at 64-65:

POOR COPY

BLEED THROUGH

The *bearing of arms, important as it is, is not the only way in which our institutions may be supported and defended,* even in times of great peril. Total war in its modern form dramatizes as never before the great cooperative effort necessary for victory. The nuclear physicists who developed the atomic bomb, the worker at his lathe, the seaman on cargo vessels, construction battalions, nurses, engineers, litter bearers, doctors, chaplains—these, too, made essential contributions. And many of them made the supreme sacrifice. Mr. Justice Holmes stated in the *Schwimmer* case (279 U. S. p. 655) that "the Quakers have done their share to make the country what it is." And the annals of the recent war show that many whose religious scruples prevented them from bearing arms nevertheless were *unselfish participants in the war effort.* Refusal to bear arms is not necessarily a sign of disloyalty or a lack of attachment to our institutions. *One may serve his country faithfully and devotedly, though his religious scruples make it impossible for him to shoulder a rifle. Devotion to one's country can be as real and as enduring among non-combatants as among combatants.* One may adhere to what he deems to be his obligation to God and yet *assume all military risks* to secure victory. The effort of war is indivisible; and those whose religious scruples prevent them from killing are no less patriots than those whose special traits or handicaps result in their assignment to duties far behind the fighting front. *Each is making the utmost*

> *contribution* according to his capacity. The fact that his role may be limited by religious convictions rather than by physical characteristics has no necessary bearing on his attachment to his country or on *his willingness to support and defend it to his utmost.* [Emphasis supplied.]

The dissenting opinion of Chief Justice Stone found that the interpretation of the naturalization statutes announced by the Supreme Court in its three earlier decisions had been adopted and confirmed by Congress. The solid basis for that view will be considered at a subsequent point.

In seeking reversal of the judgment below, petitioner contends that the court's determination conflicted with the ruling of the *Girouard* case. We find no such conflict. As we read it, the *Girouard* decision did not hold that a man who declined to pledge any type of support for the nation during a critical hour, or who withheld an agreement to perform other duties of citizenship because of alleged religious scruples, must necessarily be naturalized. Carried to its logical extremity, such an assumption would mean that citizenship could be demanded by a person who threatened, in consonance with the dictates of his own conscience, that he would not make even the most minute contribution to the national defense, or that he would actively oppose any military enterprises engaged in by the Government and would counsel others to

POOR COPY

BLEED THROUGH

oppose such measures,[24] or even that he would consort with a potential enemy to defeat the nation's war effort, or that he would engage in any other course of action opposed to the national interest which his religious scruples or whims might project.

Although the prevailing opinion expressed the view that "the *Schwimmer, Macintosh* and *Bland* cases do not state the correct rule of law," 328 U. S. at 69, we do not understand that the *Girouard* decision was intended to support any such far-reaching suppositions as those mentioned in the preceding paragraph. On the contrary, we think that the Court in that case was concerned with an individual who undertook to make an important contribution to the national defense, in the form of noncombatant military service. At most the Court disagreed with *the rule* of the *Schwimmer, Macintosh* and *Bland* cases to the extent that it related to the actual bearing of arms. In the quoted passage the majority opinion emphasized that the Court then spoke of a person who actually was willing to support and defend our institutions and to participate in "the great cooperative effort necessary for victory." The Court indicated clearly that it was referring to "unselfish participants in the war effort", to a person who "may serve his country faithfully and devotedly, though his religious scruples make it impossible for him to shoulder a

---

[24] See dissenting opinion of Chief Justice Stone in *Girouard* case, 328 U.S. at 72, n. 1.

rifle," and who was "making the utmost contribution according to his capacity." In our view that language does not warrant any assumption that naturalization must be granted to a person who, for whatever reason, would not agree to support and defend the United States in any way against a foreign enemy or who insisted on making his own individual determination, when the emergency exploded, as to whether or not he would respond to the nation's call.

In the *Girouard* case this Court was confronted with an exceptional factual situation. It was dealing with a person who professed complete willingness to render military service, as a member of the armed forces assigned to noncombatant duties. Ten thousand adherents of his sect—the Seventh Day Adventists—actually did perform noncombatant military service during World War II, some with conspicuous heroism.[25] When accepted into the armed forces, such persons took the prescribed oath of allegiance. Moreover, Congress had made special provision for the naturalization of noncitizens who served in the armed forces of the United States during World War II, excluding only "any conscientious objector who performed no military duty whatever or refused to wear the uni-

[25] See *Girouard* v. *United States*, *supra*, 328 U.S. at 62. Petitioner's brief in that case, No. 572, October Term, 1945, pp. 18, 29, pointed out that one noncombatant Seventh Day Adventist in the Army received the Congressional Medal of Honor and also listed numerous other military decorations awarded to members of that sect.

POOR COPY

form." Sec. 1001, Second War Powers Act of March 27, 1942, 56 Stat. 176, 182.[26] Conscientious objectors who did render military service and wore the uniform thus apparently were made eligible for the special naturalization benefits of this Act. *In re Kinloch*, 53 F. Supp. 521 (W. D. Wash.); *In re Sawyer*, 59 F. Supp. 428 (D. Del.). Cf. *In re Nielsen*, 60 F. Supp. 240 (D. D. C.). From these circumstances the Court concluded that Congress also wished to accord the privilege of citizenship, under the ordinary naturalization procedures, to a conscientious objector who was prepared to perform such noncombatant military duty, although not called upon actually to do so. See 328 U. S. at 64, 70. In other words, the prevailing holding in that case regarded such an individual as one who was willing to contribute to the support and defense of the United States against its enemies. It did not, in our reading, purport to endorse the naturalization of one who declined to pledge any such contribution to the national defense.

The majority's reading of the legislative mind in the *Girouard* case was by no means free from doubt, as is made clear by the dissenting opinion of Chief Justice Stone. (And see *infra*, pp. 47 to 57.)

---

[26] See also Act of December 7, 1942, 56 Stat. 1041, which conferred similar benefits upon veterans of World War I and earlier wars. A later enactment of June 1, 1948, which added Sec. 324A to the Nationality Act of 1940, 62 Stat. 281, 8 U.S.C. 724a, codified and extended the naturalization benefits available to the veterans of World War II and World War I. The 1948 Act made like provision regarding conscientious objectors who performed no service or refused to wear the uniform.

But even if there were no such doubt, it would be a very long step to the deduction which the present petitioner asks the Court to make (Br. pp. 6-7): that Congress, by expressly excluding from the naturalization benefits accorded by the Second War Powers Act a conscientious objector who might have acquired, against his will, technical military status but who "performed no military duty whatever or refused to wear the uniform", intended thereby to make such persons eligible for naturalization under ordinary procedures—despite the fact that the general naturalization law had been long and uniformly construed to deny naturalization to such persons, and the further fact (see *infra*, pp. 47 to 57) that Congress, with full knowledge of this administrative and judicial construction, had repeatedly refused to amend the statute to make such persons eligible. The argument that Congress chose this indirect and tortuous method of enacting that which it had refused to enact directly, betrays a strange conception of the legislative process. In fact, the purpose of the exception in the naturalization provisions of the Second War Powers Act is perfectly plain. Those provisions of the Act were designed to reward aliens who served in the armed forces of the United States during World War II. They contained generous exemptions from the ordinary requirements of the naturalization laws. If no reservation had been provided the statute was amenable to the construction that any

POOR COPY

BLEED THROUGH

alien who was a member of the armed forces, even a conscientious objector, could qualify for its benefits. By inserting the qualification in question Congress clearly indicated that it desired to withhold its bounty from conscientious objectors who might have a technical status as members of the armed forces, but who had performed no military duty or refused to wear the uniform.

Although the legislative history throws no light on the Congressional design in the 1942 Act or its 1948 codification,[27] earlier legislative developments do provide some illumination. The 1942 Act was successor to earlier legislation extending benefits under the naturalization laws to veterans of World War I. The earliest versions of that legislation contained no reservation specifically barring conscientious objectors.[28] The statute of May 26, 1926, 44 Stat. 654, introduced this reservation for the first time, and it has been continued in subsequent enactments.[29] Although the 1926 legislative history likewise is unrevealing,[30] it seems apparent

---

[27] See S. Reps. 989, 1664 and H. Rep. 1765, 1896, 77th Cong., 2d Sess.; 88 Cong. Rec. 1589, 1790-1791, 1794; H. Rep. 1408, S. Rep. 1207, 80th Cong. 2d Sess.; 94 Cong. Rec. 1947-1948.

[28] Act of May 8, 1918, 40 Stat. 542; Act of July 19, 1919, 41 Stat. 222.

[29] In addition to the statutes already cited see Act of March 4, 1929, 45 Stat. 1545; Act of May 25, 1932, 47 Stat. 165; Act of June 24, 1935, 49 Stat. 395; Act of August 23, 1937, 50 Stat. 743; Act of June 21, 1939, 53 Stat. 851.

[30] The original drafts of the 1926 Act did not contain this stipulation. H. Rep. 382, S. Rep. 566, 69th Cong. 1st Sess. It was included in a revised draft, which ultimately was

that the reservation was interpolated in order to conform the special naturalization benefits to like limitations in other statutory bounties awarded to veterans of World War I.[31] The legislation of that war [32] required that conscientious objectors be inducted into military service, and then authorized their assignment to noncombatant duties or, in some cases, their discharge or furlough. See *Statement Concerning the Treatment of Conscientious Objectors in the Army* (War Dept. 1919). Many such conscientious objectors never wore the uniform or performed any military service. *Id.*, p. 32. The reservation in the special naturalization statutes rewarding service during World War I, and in the later statutes, was intended to make plain the legislative wish to withhold any benefits from such persons, whose technical status in the armed forces otherwise might have been regarded as "service." The limited bounty to conscientious objectors who actually served hardly can be perverted, in our opinion, into an expression of approval of the naturalization, under the general laws, of conscientious ob-

---

enacted, submitted as a substitute by the Committee spokesman on the floor of the Senate to incorporate changes suggested by the legislative drafting service, without further explanation. 67 Cong. Rec. 7957.

[31] See 38 U.S.C. 447, 693g. The legislative development of this restriction in the veterans' benefits act likewise does not contain any direct explanation of the legislative purpose. See H. Rep. 763, 68th Cong., 1st sess.; Hearings on H. R. 10271, 68th Cong., 2d Sess.

[32] For comparison of World War I and World War II practice regarding such inductions see *Billings* v. *Truesdell*, 321 U.S. 542.

jectors who neither rendered nor were willing to render such service. On the contrary, we are unable to find that Congress, either directly or indirectly, ever sanctioned an award of naturalization under such circumstances.

C. *The Administrative and Judicial Construction of the Naturalization Laws Was Confirmed and Reenacted by Congress.*

In the *Girouard* case the Government contended that the interpretation of the naturalization laws expressed in the *Schwimmer*, *Macintosh* and *Bland* decisions had been ratified by Congress in the ensuing years. That view was adopted by Chief Justice Stone and constituted the entire basis for his dissenting opinion. However, the majority took a contrary view and concluded that the special naturalization legislation of 1942, awarding naturalization benefits to members of the armed forces, sufficiently expressed a Congressional purpose to permit the naturalization, under the general law, of conscientious objectors who were willing to serve in a noncombatant capacity. 328 U. S. at 70. That interpretation is not involved in the instant case. Congress indubitably can modify the requirements for naturalization to any extent that it may deem desirable, and we need not question, for present purposes, that such a modification was made in relation to conscientious objectors who were willing to serve as noncombatant members of the armed forces. But since we regard the holding of the

Girouard case as limited to that point, and since, with respect to conscientious objectors like this petitioner, there is no expression of Congressional intention akin to that upon which the majority relied in the *Girouard* case, we again present to this court the evidence, which impresses us as most persuasive, that Congress confirmed and accepted the interpretation of the naturalization statutes expressed in the *Schwimmer, Macintosh* and *Bland* decisions. In support of that position we invite attention to the following sequence of events.

1. The *Schwimmer, Macintosh* and *Bland* decisions found that the naturalization statutes contained positive requirements barring the grant of citizenship to an alien who was unwilling without qualification to bear arms in defense of the United States. Those decisions were generally regarded as laying down a broad general rule. See *In re Summers,* 325 U. S. 561, 572. Coming during time of peace, when opposition to war had substantial popular support, those decisions aroused considerable comment and controversy. They were well known to the members of Congress, because of discussions in the press and on the floor of Congress. Consequently it can be assumed, as a fact rather than as an abstraction, that Congress was fully aware of the doctrine that had been propounded in those cases.

2. On other occasions, when it has found itself in disagreement with interpretations of this court,

POOR COPY

BLEED THROUGH

Congress has not hesitated to amend the relevant statutory provisions. See, for example, Sec. 23, Act of June 28, 1940, 8 U.S.C. 137, adopted to overcome *Kessler* v. *Strecker,* 307 U. S. 22. See also H. Rep. 994, 76th Cong., 1st. Sess.; S. Rep. 1721 and H. Rep. 2683, 76th Cong., 3rd. Sess.; *Bridges* v. *Wixon,* 326 U. S. 135. Yet Congress never made any affirmative change in the statutory provisions which had been construed to forbid the naturalization of conscientious objectors, despite the fact that the state and lower federal Courts were following and applying the rule enunciated by this court. *Beale* v. *United States,* 71 F. 2d 737 (C.A. 8); *In re Warentkin,* 93 F. 2d 42 (C.A. 7), certiorari denied, 304 U. S. 563; *Shelley* v. *United States,* 120 F. 2d 734 (C.A. D.C.); *Clarke's Case,* 301 Pa. 321.

3. Between 1929, the year of the *Schwimmer* decision, and 1940, when Congress codified the naturalization laws in the Nationality Act of 1940, there were numerous amendments and revisions of the naturalization laws. See *Immigration and Nationality Laws and Regulations* (1944), pp. 541-567. Not one of those amendments dealt with the requirement that an alien seeking admission to citizenship must be willing to bear arms or otherwise contribute to the support and defense of the United States to the extent of his ability.

4. Commencing immediately after the *Schwimmer* decision and continuing for more than ten

years, there were vigorous and repeated attempts to persuade Congress to change the naturalization statute in order to eliminate or modify the requirements which had been interpreted by the Supreme Court as barring conscientious objectors to military service. H. R. 3547, 71st Cong., 1st. sess., 71 Cong. Rec. 2184; H. R. 297, 72d Cong., 1st sess.; H. R. 298, 72d Cong., 1st Sess.; S. 3275, 72d Cong., 1st sess.; H.R. 1528, 73d Cong., 1st sess.; H.R. 5170, 74th Cong., 1st sess., H.R. 8259, 75th Cong., 1st sess., S. 165, 75th Cong., 1st sess. We believe it is of the most vital significance that Congress refused to approve any of these measures, although the proposal was continuously before it from May 29, 1929, two days after the decision in the *Schwimmer* case, through 1940.

The basic pattern of all these measures was that of H. R. 297, 72d Cong., 1st sess. *supra,* introduced by Mr. Griffin at the first session of Congress after the *Macintosh* decision, which was entitled "A Bill to provide that religious views or philosophical opinions against war shall not debar aliens, otherwise qualified, from becoming citizens." In pertinent part, it provided that the Fourth subdivision of Section 4 of the Act of June 29, 1906 (*supra,* p. 28) should be amended by adding the following sentence:

> Except that no person mentally, morally, and otherwise qualified shall be debarred from citizenship by reason of his or her religious

POOR COPY

BLEED THROUGH

> views or philosophical opinions with respect to the lawfulness of war as a means of settling international disputes, but every alien admitted to citizenship shall be subject to the same obligation as the native-born citizen.[33]

Hearings were had before the House Committee on Immigration and Naturalization on H. R. 3547, 71st Cong., 1st sess., and on H. R. 297, 72d Cong., 1st sess., in May 1930 and January 1932, respectively. The proponents of these bills, among whom were included representatives of religious groups, stated clearly their purposes to overrule the interpretation placed on the oath by the *Schwimmer,* and *Macintosh* cases. Hearings on H. R. 3547, pp. 12, 22, 29-57, 73-109, 169-180; Hearings on H. R. 297, pp. 4-7, 10, 12, 15-19, 41-48, 53-56, 66-81, 147, 148. There was opposition on each occasion. Hearings on H. R. 3547, pp. 57-65, 73, 146-169, 181-212; Hearings on H. R. 297, pp. 85-140. Neither bill was reported out.

Bills identical with H. R. 297 were introduced in three later Congresses; these, likewise, never emerged from the files of the committee. H. R. 1528, 73d Cong., 1st sess.; H. R. 5170, 74th Cong., 1st sess.; H. R. 8259, 75th Cong., 1st sess. Other proposals which differed in minor particulars met

---

[33] H.R. 3547, 71st Cong., 1st sess., and H.R. 298, 72d Cong., 1st sess. differed only in the circumstance that they omitted the last clause, beginning "but every alien." The former bill was introduced two days after the *Schwimmer* decision had been handed down.

a like fate, death in committee. See S. 165, 75th Cong., 1st Sess., and S. 3275, 72d Cong., 1st sess.

Thus, for six successive Congresses, over a period of more than a decade, there were continuously pending before the national legislature, in one form or another, proposals urging a legislative reversal of the doctrine of the *Schwimmer, Macintosh,* and *Bland* cases. That Congress declined to enact these proposals, after hearings and after speeches advocating the change (72 Cong. Rec. 6966-6967; 75 Cong. Rec. 15354-15357), speeches which praised the dissenting opinions, seems to us conclusive proof that the prevailing opinions in this Court reflected the prevailing opinion in the Congress.

As the Court of Appeals for the Eighth Circuit said in *Beale v. United States, supra,* affirming an order which refused to admit to citizenship a person unwilling to bear arms because of conscientious reasons, 71 F. 2d at 739:

> having in mind that Congress is vested with the power and authority to fix and determine the conditions upon which the privilege of citizenship may be conferred, it is worthy of note that there have been no amendments affecting the provisions of the statutes relating to the requirements for the admission to citizenship. We must conclude, therefore, that these statutory requirements as construed by the Supreme Court have congressional sanction and approval.

5. Even more decisive, perhaps, is the clear expression of approval found in the history of the

POOR COPY

BLEED THROUGH

Nationality Act of 1940. That statute was the culmination of an exhaustive seven year study. It was drafted by a Cabinet Committee, consisting of the Secretary of State, the Attorney General, and the Secretary of Labor, following protracted consideration and discussion of each provision of the nationality laws. The final report of the Cabinet Committee suggested a complete revision and codification of the nationality laws and documented its report with a thorough discussion of each proposed section of the statute. See *Codification of the Nationality Laws of the United States,* House Committee Print, 76th Cong., 1st sess. After submission of the Cabinet Committee's report, Congress embarked upon a section-by-section examination of each provision of the proposed new nationality code.[34]

Yet in all those proceedings there is no suggestion that Congress was dissatisfied with the rule enunciated in the *Schwimmer, Macintosh* and *Bland* decisions. And the Nationality Act of 1940, as finally adopted, made no attempt to change that rule. Indeed the Nationality Act made two pertinent revisions which add significantly to the evidence that Congress had considered and acquiesced in the doctrine of the *Schwimmer, Macintosh* and

---

[34] See Hearings Before the Committee on Immigration and Naturalization, House of Rep., 76th Cong., 1st sess. on H.R. 6127, superseded by H.R. 9980; H. Rep. 2396, S. Rep. 2150, 76th Cong., 3rd sess.

Bland decisions. The first is found in Section 307 (a) of the Nationality Act of 1940, 8 U. S. C. 707 (a), which revised the former requirement (R. S. 2165) that the applicant must show that he "has behaved as a man * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." This was changed to preclude naturalization unless the applicant established that during the prescribed periods he "has been and still is a person * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States." In the second change Congress specifically incorporated in Section 335(b) of the Nationality Act of 1940, 8 U. S. C. 735(b), the precise language of the oath of allegiance, which previously had been found only in the administrative regulations, and which had been interpreted by the court in the earlier decisions. These revisions hardly reveal any dissatisfaction with the construction of the statute adopted in the *Schwimmer, Macintosh* and *Bland* cases. On the contrary, they impress us as affirmative indications of approval.

In our opinion the evidence is overwhelming that Congress noticed and considered the rulings of this court which concluded that an applicant for naturalization must express without reservation his willingness to bear arms in defense of the United States (or, possibly, must undertake at least, if called, to serve in the armed forces as a noncom-

POOR COPY

BLEED THROUGH

batant), that it made no change in the relevant statutory provisions during an era when numerous other amendments to the naturalization laws were being enacted, that it rejected specific proposals to overcome the effect of the decisions by this court, and that it declined to disturb the existing requirements when it undertook the comprehensive codification which emerged as the Nationality Act of 1940. It seems to us that this entire course of conduct was a clear and positive expression of the legislative design and constituted an acquiescence in and ratification of the interpretations by this court. See *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 488-489; *Missouri* v. *Ross,* 299 U. S. 72, 75; *United States* v. *Elgin, J. & E. Ry.,* 298 U. S. 492, 500; *United States* v. *Ryan,* 284 U. S. 167, 175; cf. *Helvering* v. *Winmill,* 305 U. S. 79, 82-83; *Helvering* v. *Hallock,* 309 U. S. 106, 119-120. As Chief Justice Stone said in the *Apex Hosiery Co.* case, 310 U. S. at 488-489:

> The long time failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which implicitly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one. This is the more so where, as here, the application of the statute * * * has brought forth sharply conflicting views on the Court and in Congress, and where after the matter has been fully brought to the

attention of the public and the Congress, the latter has not seen fit to change the statute.

To complete this portrayal of the legislative attitude, the attention of the court is invited to the somewhat inconclusive developments following the *Girouard* decision. During the 79th and 80th Congresses several bills were introduced to modify the statute. On April 16, 1946, while the *Girouard* case was under consideration by this court and six days before announcement of its decision, Representative Dolliver introduced H. R. 6147, 79th Cong., 2d sess., which proposed an amendment to the Nationality Act requiring that an applicant for naturalization must undertake that "if required, he will bear arms in support and defense of the United States." H. R. 6531, 79th Cong., 2d sess., sought to accomplish the same result. No action was taken at that session. The following session brought a number of measures favoring similar amendments. H.R. 1118, H. R. 1191, H. R. 2286, H. R. 2444, 80th Cong., 1st sess. On March 18, 1948, H. R. 2286 was reported favorably by the House Committee on the Judiciary. H. Rep. 1575, 80th Cong., 2d sess. In its report the Committee indicated that this measure was actively sponsored by the American Bar Association and the American Legion. The report stated, at p. 4:

> The bill, if enacted would unequivocally state the intent of Congress. The words "if required", inserted by the Committee, mean that should requirements regarding selective

POOR COPY

> service be enacted by the Congress, such as exempting "conscientious objectors", naturalized citizens of that category would, of course, not be required to serve.

No action was taken on this proposed legislation by either House of Congress. It does not appear that similar bills have been introduced in the 81st Congress.

We suggest two possible explanations for this inaction by Congress. First, Congress was aware of and was satisfied with the administrative interpretation, now being tested in the instant case, that the effect of the *Girouard* decision was limited to persons who were willing to serve in the armed forces as noncombatants and did not alter the ineligibility of those who were unwilling to serve at all. Second, the Senate Judiciary Committee has been engaged in a study of the immigration and nationality laws, for the purpose of enacting a comprehensive revision and codification. See S. Rep. 503, 80th Cong., 1st sess.; S. Rep. 1390, 80th Cong., 2d sess.; S. Rep. 65, 81st Cong., 1st sess.; S. Doc. 3, 81st Cong., 1st sess. Few proposals to amend the immigration and naturalization laws have been enacted while that study has been in progress, particularly during the 81st Congress. We believe that these subsequent developments are not inconsistent with the very strong indications of legislative approval of the earlier decisions rendered by this Court.

III

Petitioner Has Not Satisfied the Requirements of the Naturalization Laws. Therefore He Is Unqualified for Naturalization

We turn now from a consideration of general principles to an examination of the facts. Cohnstaedt seeks the privilege of naturalization. Can it be said that he has fulfilled the terms upon which Congress conditioned such a grant? The naturalization court and the Supreme Court of Kansas both held that he had not. The findings of those courts should not be disturbed unless they clearly misconceived the facts or misapplied the law. We believe the courts below were right.

His own answers to the naturalization inquiry reveal the utter inadequacy of Cohnstaedt's approach to the obligations of American citizenship. R. 23-25, 13-17. He professes a conscientious opposition to all war, would not serve in the armed forces of the United States, even as a chaplain or medical corpsman, and would not consent to wear a military uniform. As a civilian he would not manufacture munitions or deliver them to the fighting men, nor would he contribute anything or render any service of which he was capable which might "be used solely and directly in furtherance of armed conflict." He might heed the Government's command to perform other duty during a period of emergency "which does not conflict with my Christian beliefs." He would help to remove

POOR COPY

BLEED THROUGH

wounded from a battlefield, but only if permitted to do so as a civilian. Whatever he did "would be beneficial in time of peace as well as in time of war and if my work furthered the war effort it was purely incidental and not because I intended to further the war effort."

We do not think that a person who expresses such indifference to the nation's urgent need can satisfy the requirements of the naturalization laws. Nor do we believe that his willingness to proceed with his normal peacetime occupation in time of war, despite the possibility that such work might incidentally contribute to the defense of the United States against its enemies, can be compared with the sacrifices of those in military service, whether combatant or noncombatant.

We think it doubtful that such a person can fairly be described as attached to the principles of the Constitution and well disposed to the good order and happiness of the United States. But we do not think it even doubtful that such a person cannot in good faith take an oath to support and defend the Constitution of the United States against foreign enemies. It can be persuasively argued, as it was in the majority opinion in the *Girouard* case, that noncombatant members of the armed forces, merchant seamen, workers in war industry, all support and defend their country's institutions in time of war as truly as the combat infantryman. But if willingness to "support and defend * * * against

all enemies, foreign and domestic" be construed to include this petitioner's state of mind, then those words are deprived of the meaning which is normally given them and which Congress presumably intended them to have.

A. The Claim to Special Naturalization Status as a Consequence of Generous Treatment of Conscientious Objectors in Selective Service Legislation.

Petitioner urges, nevertheless, that the conscription legislation enacted by Congress consistently has accorded a special status to conscientious objectors and that he is claiming only the privileges which traditionally have been allowed by Congress. He asserts (Br., p. 8) that "Never in our history has Congress compelled a religious conscientious objector such as petitioner to enter the armed services." In our opinion the assumptions implicit in this contention are entirely fallacious. As we have indicated, there has been no uniform policy of Congress to excuse conscientious objectors from military service. There is no Constitutional requirement that Congress do so, and certainly there can be no guarantee that Congress would do so in any future emergency. Nor, assuming continued Congressional willingness to excuse conscientious objectors, can there be any guarantee that the agencies to which Congress commits the administration of such laws would treat this petitioner as a genuine

62 Stat. 609, 50 U.S.C. App., Supp. II, 456, passed during a time when conscripts were not so urgently needed, authorizes a full exemption from all service of conscientious objectors opposed to noncombatant military duty.[37] On the other hand, the 1948 Act no longer recognizes any special status for conscientious objectors on philosophical or moral grounds, limiting its dispensations to those whose opposition to military service is rooted in religious scruples. *Id.*

Petitioner thus cannot point to any consistent national policy regarding the military service of conscientious objectors, nor can he predict what Congress will prescribe during future emergencies. Most Americans have an abhorrence of war, but they are willing to subordinate their own personal inclinations to the common need. Petitioner is not willing to do this. He claims the right to define the terms under which he will consent to serve, as he insists on defining the terms under which he will accept naturalization. He thus wishes to reserve a right of private judgment, even, in the words of Dean Wigmore, of "private secession."[38] He in-

---

or refused to comply with directives such as those ordering them to report to civilian camps. These were prosecuted and endured prison terms. See Elliff, *Prosecution of Conscientious Objectors under the Selective Service Act* (1944) 6 Fed. Bar Journ. 41. See also 4th Report of the Director of Selective Service (1948) pp. 175-186.

[37] For legislative history of this provision see S. Rep. 1268, H. Rep. 1881, and H. Conf. Rep. 2438, 80th Cong.

[38] See Wigmore, *United States* v. *Macintosh Symposium* (1931), 26 Ill. L.R. 375. See also discussion of the *Girouard* decision in (1947) 33 A.B.A. Journ. 95, 323, 540, 663.

POOR COPY

BLEED THROUGH

sists on making his own decisions during a time of emergency and is unwilling to trust to the generosity of Congress to make allowance for his conscientious scruples, if need arises to call upon him for aid in defense of the nation.

We cannot agree that the exemptions Congress may have permitted conscientious objectors in relation to selective service have any necessary relationship to their qualification for naturalization. Many reasons, in addition to a deference to religious scruples, may have motivated the allowance of such exemptions. For example, it is quite likely that Congress took into consideration the past difficulties experienced in dealing with religious dissenters.[39] It may have wished to avoid similar difficulties, which certainly were excessive in relation to the number of potential recruits involved. Recognizing that such persons would not be good soldiers, Congress doubtless sought a practical solution which would avoid disruption of military discipline. In our opinion the generosity of Congress in accommodating conscientious objectors who sought release from full military duty does not necessarily mean that Congress was eager to welcome them to the ranks of American citizenship. Congress may well have concluded that such persons would not be effective fighting men,[40] or even may have wished to

---

[39] See *Statement Concerning the Treatment of Conscientious Objectors in the Army*, (War Dept. 1919).

[40] This Court in the *Girouard* case, 328 U.S. at 65, compared the disablement of the conscientious objector with that of one

defer to their scruples, without believing that it was desirable to encourage them and augment their numbers by admitting them to citizenship.[41] In any event, they have not been exempted from the general requirements of the naturalization laws. They have no right to naturalization if they cannot meet those qualifications.

B. The Claim to Full Equality with Native Born American Citizens.

It has been urged on other occasions that since the religious scruples of American citizens are granted bountiful recognition in the draft laws, a similar generosity must favor alien conscientious objectors who seek naturalization. There appear to be two obvious flaws in this argument. In the first place, few Americans would regard themselves as removed from the temporal demands of governmental authority, and few would insist upon a right to disregard measures adopted in furtherance of

---

who is physically incapacitated. This implies doubt as to their usefulness in the ranks, rather than a high regard on the part of Congress for them as individuals. Also of interest is the history of S. 315, 78th Cong., 1st sess., introduced as a consequence of a resolution adopted at a convention of the American Legion. This bill, which was never enacted, sought to repeal the deferments to conscientious objectors allowed by the Selective Training and Service Act of 1940. The opposition to this measure, including the military authorities, emphasized that the provisions relating to conscientious objectors were desirable as a practical expedient. Hearings before H. Comm. on Military Affairs, pp. 14, 22, 23-24.

[41] Of course, not all alien residents are granted the privilege of naturalization. See p. 65, *infra*.

POOR COPY

BLEED THROUGH

national safety. Most citizens would be content to observe laws enacted by Congress to promote the common good.

Secondly, it is clear that an alien seeking citizenship cannot demand full equality of status with the citizen. Standing at the threshold and seeking admission to citizenship, the alien must meet every condition fixed by Congress. In many obvious respects his situation does not approximate that of the citizen. For example, our naturalization laws always have excluded, and to some extent still bar,[42] aliens of the Asiatic racial strains. Those restrictions repeatedly have been upheld. *United States v. Thind,* 261 U. S. 204; *Ozawa v. United States,* 260 U. S. 178; *Toyota v. United States,* 268 U. S. 402. But persons of Oriental descent who are citizens by birth are subject to no such disability. *United States v. Wong Kim Ark,* 169 U. S. 649. In any event, it seems entirely within the competence of Congress to insist that an alien who is about to renounce his fealty to a foreign sovereign should demonstrate the sincerity of his vows by showing affirmative attachment to the United States and by promising to aid the nation in its hour of need.

---

[42] Sec. 303, Nationality Act of 1940, 8 U.S.C. 703.

C. The Claim That the Oath of Allegiance Taken Outside the Naturalization Process Never Has Been Regarded as Entailing a Promise of Military Service.

This argument relies on the close resemblance between the oath of allegiance administered to public officers, 5 U. S. C. 16, and that taken by naturalization applicants. It declares that the oath of the public officer never has been interpreted as assuming an obligation to perform military service. From this premise it urges that a like promise is not implicit in the naturalization oath.

It seems to us that this contention, which also has been advanced on other occasions, stems from a number of unsupportable assumptions. In the first place, the insufficient oath of allegiance is only one element in twin grounds for opposing naturalization; the other is the inability to establish attachment and favorable disposition to the United States. Secondly, this Court frequently has found that the same language can have varying meanings in different contexts. E. g., *Helvering v. Stockholms &c. Bank,* 293 U. S. 84, 86-88; *Atlantic Cleaners & Dyers v. United States,* 286 U. S. 427, 433-434. The oath of the public officer relates primarily to the duties of his office; the oath of the naturalization applicant relates directly, on the other hand, to the broader duties of citizenship. Thirdly, the naturalization oath is taken in a judicial proceeding, and its implications consequently have been exam-

POOR COPY

BLEED THROUGH

ined by the courts. We are not aware of any such judicial inquiry regarding the scope of the public officer's oath. It is quite conceivable that in some future litigation, arising during a time of national peril, a person who will not undertake to aid in the nation's defense will be deemed disqualified to assume public office. Cf. *In re Summers, supra*; *Hamilton v. Regents, supra.* Fourthly, Article VI, cl. 3 of the United States Constitution, after prescribing the oath of office, specifies that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." In the light of the *Summers* case, we certainly cannot concede that a requirement that the candidate be willing to assist in the national war effort could be regarded as a "religious test." It is self-evident that the mere fact that a qualification to public office may be inconsistent with some religious scruples does not make that qualification a "religious test." It is conceivable that religious beliefs might lead a man to preach and practice the overthrow of the Government by force and violence; but the fact that his reasons were religious would certainly not entitle him to take the oath of office. In any event, no comparable limitation inhibits the authority to fix the conditions governing naturalization. Finally, the *Girouard* case suggested that a conscientious objector inducted into the armed services as a noncombatant had to take an oath of allegiance, and offered this circumstance

as an indication that Congress intended a relaxation of the ordinary meaning of the oath in regard to this category of conscientious objectors. There is no evidence of any such relaxation with respect to conscientious objectors who will not serve in the armed forces in any capacity.

D. The Claim That the Requirements of the Statute Are Satisfied Since Petitioner Describes Himself as Attached to the United States and Asserts That He Is Willing to Take an Unqualified Oath of Allegiance

The short answer to this contention is that it begs the question. The petitioner's fitness for American citizenship is to be judged by the effect of his actions and attitudes in the light of the requirements of the statute, rather than by his own characterization of his qualifications. The opposition to his naturalization has sprung from his inability to meet the tests and standards prescribed by the naturalization statute itself. Congress has fixed those requirements, and petitioner cannot avoid their impact by a plea that they are offensive to his religious scruples. If those scruples bar him from fulfilling the conditions under which naturalization may be awarded, he must forego the privilege of naturalization.

The holding of the *Girouard* case cannot be read as sanctioning the naturalization of the instant petitioner. Girouard was willing to defend the United

POOR COPY

BLEED THROUGH

States in any capacity except in aggressive combat. The ruling in his case interpreted the commitment of the oath of allegiance to "support and defend" the United States as including the type of support he promised. Cohnstaedt, on the other hand, will not pledge any support to the nation. A ruling in his favor would ignore and render meaningless the undertaking of the oath of allegiance "to support and defend the United States against all enemies, foreign and domestic." It would thus go far beyond the *Girouard* case, would erode the requirements of the statute, and would tend to produce the confusion suggested by the prevailing opinion in the *Macintosh* case.

In no true perspective does this case involve the cherished rights to freedom of expression and religious belief. Petitioner may continue to enjoy those privileges within legal and Constitutional bounds as an alien resident of this country, but if he cannot comport with the rules laid down by Congress for admission into the society of United States citizenship he cannot complain if the benefits of citizenship are denied him.

The requirements of the naturalization laws here concerned were designed to preclude from citizenship those who were unwilling to assume what Congress regarded as the minimum responsibilities of a citizen. We believe that the contentions of the petitioner in the instant case represent an attempt to undermine those requirements. They challenge

the authority of Congress in a domain where its will must be paramount. In our view, the acceptance of those contentions ultimately would weaken the security of the nation and would depreciate the high value of American citizenship.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

L. PAUL WININGS,
General Counsel,
Immigration and Naturalization Service.

JOSEPH W. BISHOP, JR.,
Special Assistant to the
Attorney General.

CHARLES GORDON,
Attorney.

FEBRUARY, 1950.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 872140 454

POOR COPY
BLEED THROUGH